IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 937 of 1989
with
First Appeals Nos.938 of 1989, 939 of 1989, 941 of 1989
and 943 of 1989.

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJPIPLA KHADI GRAMODHYOG VIKAS SANGH
Versus
KISHORIBEN MAHENDRABHAI PATEL

Appearance:
MR RAJNI H MEHTA for Petitioners No. 1-2
NOTICE SERVED for Respondents No. 1,3-4,6
NOTICE UNSERVED for Respondent No. 2
MR SHANTILAL M SHAH for Respondent No. 5

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE K.A.PUJ

Date of decision: 27/03/2002

COMMON ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. These five appeals are filed by the Insurer, Rajpipla Khadi Gramodyog Vikas Sangh, appellant No.1, and the National Insurance Company Limited, with whom the truck in question was insured, under Section 110-D of the Motor Vehicles Act, 1939 ('Act' for short), challenging the common judgment and award dated October 12, 1988, passed by the Motor Accident Claims Tribunal (Main), Vadodara, in MAC Applications Nos.710/84, 758/84, 759/84, 772/84, 794/84, 943/84 and 954/84. All the appeals arise from the common judgement and award of the Tribunal and, as common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common order.

2. The accident in question had occurred on July 1, 1984 at about 11.30 p.m. near Kishannagar between Kundhela and Kelanpur villages. The deceased Mahendrakuamr and his relatives were returning to Vadodara from Garudeshwar by the Fiat car No.GJT 8399 and it was driven by Kirtikumar Patel. According to the case of the claimants, the motor truck No.GTB 5968 driven by the opponent No.1 was found to be going ahead of the aforesaid Fiat car had reached near Kishannagar. The Truck bearing Registration No.GTB 5968 was loaded with wooden logs and they were projecting out of the body of the truck for about 3 to 4 feet and no caution-signal was displayed. It is further the case of the claimants that the aforesaid truck had no brake lights or the brake lights were not working. It is the case of the claimants that the opponent No.1, who was driving the truck, had applied brakes suddenly with the result that the Fiat car had dashed with the truck and the deceased and six other persons had received injuries. The deceased Mahendrakumar, who was travelling in the Fiat car, had succumbed to the injuries on the spot.

3. MACP No.954 of 1984 was filed by the heirs and the legal representatives of the deceased Mahendrabhai Patel claiming the total compensation of Rs.3,35,000/for the tragic death of the deceased caused by the negligence driving of the truck driver. MACP No.710 of 1984 has been filed by the injured, Kirtikumar Ganpatbhai Patel claiming the total compensation of Rs.9,999/- for the injuries sustained by him in the vehicular accident. MACP No.758 of 1984 has been filed by Smt. Niruben Prakashbhai Patel claiming the total compensation of

Rs.80,000/ for the injuries sustained by her in the vehicular accident. MACP No.759 of 1984 has been filed by Prakashbhai Jayantibhai Patel claiming the total compensation of Rs.9,999/- for the injuries sustained by him in the vehicular accident. MACP Nos.772 of 1984 and 799 of 1984 were filed, respectively, by the minor applicant Shetal Kirtibhai Patel and Ishwarbhai Prabhudas Patel, claiming the total compensation of Rs.20,000/- in each application for the injuries sustained by them in the vehicular accident. MAC No.943 of 9184 was filed by Kishorben Mahendrabhai Patel claiming the total compensation of Rs.30,000/ for the injuries sustained by her in the vehicular accident. All the claim applications were resisted by the owner, the driver of the Truck in question and the Insurance Company, inter alia, contending that the truck in question was not involved in the accident and the compensation claimed by the claimants in each application was exaggerated. It was further contended that, even if the truck in question is held to be involved in the accident, the driver of the truck had not caused the accident and he was not responsible or negligent in causing the accident. The Tribunal had consolidated all the MAC Petitions as they arose out of one accident. MAC Petition No.954 of 1984 was treated as the main application and the common evidence was recorded in that application.

4. The claimants and the opponents had led oral as well as documentary evidence in support of their case. The Tribunal, on over all appreciation of the evidence on record, came to the conclusion that the accident in question had occurred because of rash and negligent driving of opponent No.1 who was driving the truck No. GTB 5968. It was further held that the driver of the Fiat car No.GJT 8399 was not rash and negligent in driving the Fiat car and the accident in question had taken place due to the sole negligence on the part of the driver of the truck. With regard to quantum of compensation, the Tribunal, on the basis of material produced before it, awarded to the claimants of each application the compensation, as under:

MAC Case No.710 of 1984 Rs.9,000/-
MAC Case No.758 of 1984 Rs.80,000/-
MAC Case No.759 of 1984 Rs.4,300/-
MAC Case No.772 of 1984 Rs.20,000/-
MAC Case No.794 of 1984 Rs.6,600/-
MAC Case No.743 of 1984 Rs.23,500/-
MAC Case No.754 of 1984 Rs.2,02,250/-

5. The driver and the owner of the motor truck No.GTB 5968, and the Insurance Company have challenged

the common judgment and award referred to above. First Appeals Nos. 940/89 and 942/89 which arose from MACP Nos.759/84 and 794/84, came to be summarily dismissed as the claim involved in those appeals was petty and small.

6. Heard learned counsel Mr. R.H. Mehta for the appellants. He has taken us through the entire record and proceedings of the case and submitted that the claimants had failed to prove that the motor truck No.GTB 5968 was involved in the accident. Having gone through the entire evidence on record, we are of the opinion that the claimants had proved successfully that the the motor truck No.GTB 5968 was involved in the accident and, due to the sole negligence of the driver of the motor truck No.GTB 5968, the accident had taken place. The evidence of the driver of the Fiat car, namely, Kirtikumar, Exh.136, the panchanama and the First Information Report, had proved successfully that the the motor truck No.GTB 5968 was involved in the accident. It may be stated that the driver of the the motor truck No.GTB 5968, namely, respondent No.6 in these appeals, had not stepped into the witness box to deny the suggestion that his truck was not involved in the accident. On the strength of the evidence produced by the claimants on record, we are of the opinion that it is proved beyond doubt that the motor truck No.GTB 5968 was involved in the accident.

7. The learned counsel for the appellants has vehemently submitted that the Tribunal was more liberal in awarding the compensation to each claimants in their claim petitions. In our opinion, having gone through the evidence led by the claimants with regard to the compensation claimed by them in each application, we are of the opinion that the Tribunal has awarded just and adequate compensation looking to the individual cases and injuries and the death caused to deceased Mahendrakuamr and the loss suffered by his estate. In our view, taking into consideration overall view of the entire evidence produced by the claimants on record, the compensation awarded by the Tribunal in each of the claim petitions cannot be called as excessive and, therefore, these appeals deserve to be dismissed.

8. As a result of foregoing discussion, we find that there is no substance in the present appeal and the same is, therefore, dismissed with no order as to costs. The common judgment and award dated October 12, 1988, passed by the Motor Accident Claims Tribunal (Main), Vadodara, in MAC Applications Nos.710/84, 758/84, 772/84, 943/84 and 954/84, is confirmed.

March 27, 2002 (M.H. Kadri, J.)

(K.A. Puj, J.)

(swamy)